

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT DEREK LURCH, JR,

Plaintiff,

-against-

P.O. GILLIAN FRANCIS, ET AL.,

Defendants.

22-cv-4055 (JGK)

ORDER OF SERVICE

JOHN G. KOELTL, District Judge:

The plaintiff, appearing pro se, brings this action under 42 U.S.C. § 1983, alleging that, after he was assaulted and robbed, police officers unlawfully detained him under New York Mental Health Law § 9.41 and transported him to Bellevue Hospital for psychiatric evaluation. On August 4, 2022, the Court granted the plaintiff's request to proceed in forma pauperis ("IFP"), that is, without prepayment of fees. ECF No. 6. On December 12, 2022, the plaintiff filed a second amended complaint, which named as defendants the three New York City Police Department ("NYPD") officers whom the Court had previously ordered the New York City Law Department to identify pursuant to Valentin v. Dinkins, 121 F.3d 72, 76 (2d Cir. 1997). See ECF Nos. 12, 15, 16. The Court now directs service on defendants Officer Gillian Francis and Officer Jonathan Ruiz.¹

¹ The New York City Law Department represents that the third named defendant, Former Police Office Enmanuel Mendoza, is no longer employed by the NYPD. ECF No. 15. The Law Department

DISCUSSION

Because the plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² Walker v. Schult, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); see also 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow the plaintiff to effect service on defendants Francis and Ruiz through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

represents that it notified the NYPD of this matter and that the NYPD Legal Bureau sent Mr. Mendoza a "designation of service" form on November 22, 2022. The Court will wait to issue a summons as to Mr. Mendoza until the Law Department notifies the Court whether Mr. Mendoza has designated the NYPD to accept service on his behalf. See id. at 2.

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summons be served within 90 days of the date the complaint is filed, the plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

If the complaint is not served within 90 days after the date the summonses are issued, the plaintiff should request an extension of time for service. See Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

The plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if the plaintiff fails to do so.

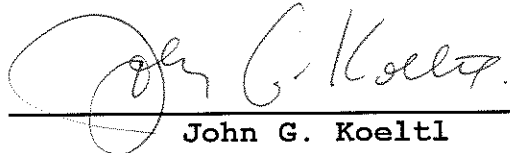
CONCLUSION

The Clerk of Court is directed to mail a copy of this order to the plaintiff, together with an information package. The Clerk of Court is instructed to complete the USM-285 forms with the addresses for defendants Francis and Ruiz and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Clerk of Court is further directed to mail an information package to the plaintiff.

SO ORDERED.

Dated: New York, New York
December 23, 2022



John G. Koeltl
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES³

1. Officer Gillian Francis, Shield No. 18393, is assigned to the Midtown South Precinct, and may be served at 357 West 35th Street, New York, NY 10001.
2. Officer Jonathan Ruiz, Shield No. 29010, is assigned to Police Service Area 3, and may be served at 25 Central Avenue, Brooklyn, NY 11206.

³ See ECF No. 15.